

LICENSE REVIEW BOARD MINUTES
CITY OF KENNESAW
Council Chambers
Wednesday, May 21, 2014 4:00 p.m.

APPEARANCES OF COUNSEL

For the Board:

Sam Hensley, Jr.

For the City:

Jamie Wingler

BOARD MEMBERS:

David Burns

Malik (Jr.) Patel

Kevin Tidwell

and Assistant City Clerk Marilyn Shoaf

- A. Due Cause Hearing for:
Damanis Food and Fuel d/b/a Stop 2 Go Shell
2515 N. Cobb Parkway
Kennesaw, GA 30144
Licensee: Dwayne Kilbourne

CALL TO ORDER

The meeting commenced at 4:04 PM. License Review Board Chairman David Burns introduced the License Review Board Members, Assistant City Clerk Marilyn Shoaf, Attorney Sam Hensley representing the License Review Board and Attorney Jamie Wingler representing the City.

Attorney Hensley went over policy and procedures for the hearing as follows: will utilize and enforce the evidence but much more loosely than in a court of law; defendant would be entitled to present evidence, testimony and witnesses, and is entitled to be presented by Counsel but does not have to have an attorney; there will be an opportunity for cross examination with witnesses; Attorney Jamie Wingler will present on behalf of the City and will go first in regards to the allegations against the alcohol license; can request that the charges be read into the record or can waive the reading of the charges; all the board has to find is a 51% case that the alleged violation has occurred; if there are outstanding or pending criminal charges that relates to this incident, which he believes there are, those folks who are facing those charges are entitled to invoke their fifth amendment right against self-discrimination if they so choose, meaning they do not have to testify; the possible penalties that can be imposed by the License Review Board, if they find there are grounds to do so can be probation, a suspension of the alcohol license, or a revocation of the alcohol license; if they recommend a penalty of six months suspension or greater or a revocation of the alcohol license the case will automatically be referred to the Mayor and Council for a second hearing; if they recommend less than six months or a probation period the licensee has

the right to file an appeal to the Mayor and & Council; you're appeal must be received within five days after your official notice of any action the License Review Board would take in regard to your license. Mr. Wingler will be going first to present the City's case, and will swear in all the witnesses. At this time it was turned back to Chairman Burns.

The charges were waived to be read and Attorney Hensley swore in all the witnesses. Chairman Burns asked Attorney Wingler to present the City's case.

Attorney Wingler called Officer Scott Luther to testify. Attorney Wingler introduced certified copies of Exhibit A, copy of the letters provided to the alcohol license holder and the permit holders notifying them of the hearing today; Exhibit B, a certified copy of Section 6-1 which is the Definition Section of the Alcohol License Code of Ordinances for the City of Kennesaw; Exhibit C, Section 6-63 which is the Procedures of the Code, and Exhibit D which is Section 6-70, regarding permit holders.

Attorney Wingler asked Officer Scott Luther to state his name; state where he was employed and for how long. Officer Scott Luther answered with his name, Kennesaw Police Department and has been employed a little over 15 years. Attorney Wingler stated this is an alcohol permit case and asked Officer Luther if he was involved in the case. Officer Luther answered he was since he is one of the alcohol compliance officers. Attorney Wingler asked how long he has been in that position and what happened on April 18, 2014. Officer Luther answered he has been an alcohol compliance officer for approximately seven to ten years, and on April 18th, he was going through the list that is kept by the Police Records Department of everyone that has pouring permits. He noticed the Shell Station only had an alcohol license holder listed with no other employees. He then went to the location at 2515 North Cobb Parkway and made contact with two employees, Emery and Shahid. They identified themselves as employees, and he asked to see their pouring permits. Shahid showed a license permit that expired February, 2014, and Emery showed a license permit that actually expired March 7, 2012. Officer Luther stated he asked why they didn't have valid permits. Shahid said he forgot about it and Emery just shrugged his shoulders. Officer Luther asked for the alcohol license holder. Emery and Shahid stated the owner was out of town for a few days, and they were unable to contact him. Officer Luther explained to them they could no longer sell alcohol, and should renew their permits as soon as possible. Shahid applied for the renewal immediately, and it was expedited so they could sell alcohol for the weekend. It was Easter weekend, and the City was going to be closed on Good Friday. Officer Luther let them stay open and made it very clear the permit holder had to be on the premises at all times. After a couple of days, Officer Luther made contact with the alcohol license holder who was aware that Shahid and Emery did not have valid permits. Officer Luther issued Mr. Kilbourne two citations for having two employees without valid permits.

Attorney Wingler asked Officer Luther when he referred to the licensee was he referring to Dwayne Kilbourne, and when he was referring to Emery and Shahid was he referring to Emery Rusharaz and Shahid Ali, and Officer Luther stated yes.

Attorney Wingler asked Officer Luther if Emery Rusharaza, Shahid Ali and Dwayne Kilbourne were present today and he identified all three individuals. Attorney Wingler asked Officer Luther if he recognized what he had marked as Exhibit E, and Officer Luther stated it was the citation he issued to Mr. Kilbourne in reference to Emery Rusharaza's pouring permit being

expired on March 7, 2012. Jamie introduced Exhibit F and asked Officer Luther if he recognized this document, and Officer Luther stated this is a citation he issued to Mr. Kilbourne in reference to Shahid Ali's pouring permit being expired February 19, 2014. Attorney Wingler stated they did not have the proper permits, and Officer Luther commented that was correct. Attorney Wingler had no more questions from Officer Luther.

Chairman Burns asked the Board if they had any questions for Officer Luther. There were none. Attorney Hensley asked the licensee Mr. Kilbourne if he had any questions for Officer Luther and he had none. Chairman Burns then asked Mr. Kilbourne to address the Board.

Dwayne Kilbourne stated his name and was the alcohol license holder. At the time of the occurrence, he was in Ohio for a fundraiser, and appreciates the City trying to help rectify this situation. Mr. Kilbourne stated this was an oversight on his part, and he hasn't had any occurrences before this one to his knowledge. He asked the Board if they had any questions that he might clarify. Chairman Burns asked how long Emery had worked for Mr. Kilbourne, and Mr. Kilbourne stated he was actually there before he came to the State of Georgia. Chairman Burns asked if he was the owner of the business now and he commented that he is a profit shareholder, but operational yes. Effective January 1, 2014, he was listed at the State. Chairman Burns asked if the two gentlemen were at this location before he became part owner, and he answered correct. Chairman Burns asked whose obligation it was to make sure their licenses were up-to-date and Mr. Kilbourne answered, it is his duty. Mr. Kilbourne stated this is an oversight on his part and apologized and doesn't take this lightly, but seriously. Chairman Burns asked what kind of alcohol training do these employees receive? Mr. Kilbourne answered the training provided by the State with no additional training than the standard State training to his knowledge. Chairman Burns asked Mr. Kilbourne if he provided his employees any additional training besides what the State requires and Mr. Kilbourne stated no. Mr. Kilbourne advised that when changes or requirements are made at the City, he has a meeting with his employees to discuss the changes to insure they are being followed. Mr. Kilbourne stated he trains new employees on the job or Shahid would train, and they would be required to get their pouring permit. Chairman Burns commented if the gentleman who has a violation would be doing the training? Mr. Kilbourne stated he understands now that was a mistake. Chairman Burns asked Mr. Kilbourne again, for clarification, if his company has any type of training program to ensure this will not happen again. Mr. Kilbourne answered only the documentation provided by the State. Mr. Burns asked the Board if they had any comments for Mr. Kilbourne. There were none.

Attorney Wingler made his closing statement. There has been no denial of the violations, and the City has the desire to be consistent in the punishment for alcohol violations. He recommended a two week suspension of the alcohol license.

Mr. Kilbourne's closing argument was that he would like for the Board to understand he takes this very seriously. He apologized for the oversight, and has taken corrective action to make sure all permits are on site or on the person. He asked the Board not to suspend his license at this time and thanked the Board for their time and consideration.

The Board deliberated in open discussion. Kevin Tidwell stated he believes in consistency. He understands minors were not involved but this is just as worse, and is leaning towards

what the City is recommending. Chairman Burns stated he appreciated Mr. Kilbourne's honesty and efforts in trying to amend the wrong that has been done. He commented as a citizen of Kennesaw, that he could not stress how important it is for the City to have safe businesses. He would highly recommend that Mr. Kilbourne come up with a program for his employees, besides what's offered by the State, and send his employees for Evindi training. He stated it is unacceptable to have employees without alcohol permits, especially for years. Chairman Burns agrees with the City of a two week suspension. Mr. Patel had no comments.

Kevin Tidwell made a motion to suspend the alcohol license for two weeks, seconded by Malik (Jr.) Patel. Vote taken, approved unanimously, 3-0. Motion carried.

Attorney Hensley advised Mr. Kilbourne he would receive a written notice on the decision of the Board which would start the clock on the appeal rights to the Mayor and City Council, and he has five (5) days to appeal. Even though it did not involve selling to an underage, an intoxicated person, or violation of Sunday sales, Mr. Kilbourne would be required to remove any and all alcohol signage during the suspension period.

Meeting adjourned at 4:25 PM.

As Submitted,

Marilyn Shoaf

Marilyn Shoaf
Assistant City Clerk